

HOUSE BILL 1661

By Ragan

AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 1 and Title 10, Chapter 3, relative to accessing or viewing obscene library materials by minors.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 10, Chapter 1, is amended by adding the following as a new part:

10-1-401.

This act is known and may be cited as the "Restricted Access by Minors to Obscene Library Materials Act."

10-1-402.

As used in this part:

(1) "Contemporary community standards" means the prevailing standards in the adult community as a whole in a district with respect to what is not suitable for display or distribution to, or that is readily accessible by, a minor, as specified in a petition, relating to any book, pamphlet, magazine, printed matter, picture, photograph, drawing, sculpture, video or computer game or software, video, recording, writing, media, or other content or material that is determined to:

(A) Be harmful to minors, as that term is defined in § 39-17-901;

(B) Depict excess violence, as that term is defined in § 39-17-901;

(C) Depict nudity, as that term is defined in § 39-17-901;

(D) Be obscene, as that term is defined in § 39-17-901;

(E) Be patently offensive, as that term is defined in § 39-17-901;

(F) Be of a prurient interest, as that term is defined in § 39-17-901;

(G) Depict sadomasochistic abuse, as that term is defined in § 39-17-901;

(H) Contain sexual conduct, as that term is defined in § 39-17-901;

(I) Depict sexual excitement, as that term is defined in § 39-17-901; or

(J) Contain any other explicit description or account of nudity, obscenity, material of a prurient interest, sexual excitement, sexual conduct, excess violence, or sadomasochistic abuse.

(2) "Display" means to position or make available for unsupervised viewing by a minor whether in person or electronically;

(3) "Distribute" means to allow unrestricted and unsupervised physical or electronic access to a minor or to transfer possession of, whether by loan or permanent ownership, with or without consideration, to a minor;

(4) "District" means a designated judicial district specified in § 16-2-506;

(5) "Library" means a library:

(A) Within the state library system, as described under § 10-1-103;

(B) Owned or operated, in whole or in part, by a local government or chartered, authorized, or housed in a government-owned facility or vehicle;

(C) At a public school of higher education; and

(D) Governed by or under the control of a local education agency, charter school, or magnet school;

(6) "Make readily accessible" means to physically place within the ordinary reach of an unsupervised minor or allow unrestricted and unsupervised electronic access to a minor;

(7) "Minor" means a person less than eighteen (18) years of age;

(8) "Petition" means a petition that satisfies the requirements of § 10-1-403(a); and

(9) "Resident" includes a lawful permanent resident as that term is defined in § 55-50-102, other than a person awaiting asylum adjudication status or any other deferred residency status.

10-1-403.

(a) The residents of a district may circulate a petition for signatures for the purposes of prohibiting each library within a district from displaying, distributing, or making readily accessible to minors any content or material in possession of a library that is specified in the petition as not meeting contemporary community standards. To be valid, the petition must:

(1) Be signed by adult legal residents within a district numbering not less than two percent (2%) of the total number of the legal voters who voted in the last gubernatorial election in such district; and

(2) Conform to the requirements of the secretary of state under subsection (c).

(b) A petition must be filed with each county election commission within a district. Upon receipt of a petition by a county election commission within a district, the commission or commissions, as applicable, shall validate the petition and upon

validation, provide notice along with a copy of that portion of the petition identified in subdivision (c)(1)(A)(1) to each library within the applicable commission's jurisdiction. Upon receipt of notice and the portion of the petition, the libraries within the district shall not display, distribute, or make readily accessible to minors any content or material in possession of the library as specified in the petition as not meeting contemporary community standards.

(c) The secretary of state shall:

(1) Promulgate rules in accordance with the Uniform Administrative Procedures Act, codified in title 4, chapter 5, to:

(A) Establish a format for a petition, the minimum standards for the correct and legally sufficient statement of the petition purpose, the content and material which is the subject of the petition, and the minimum legally required information for individual petition signatories. The formatting rule must require that the following be on separate and distinct pages:

(i) The title of the petition, the district to which it applies, and the content or material that is the subject of the petition; and

(ii) The signature pages of the petition;

(B) Establish procedures and reasonable time limits after petition submission to a county election commission by which such commission must verify and certify the validity of the petition in accordance with subsection (a);

(C) Provide the time limits to county election commissions with instruction on signature verification, communication between such

commissions, affected libraries, and the secretary of state, and methods by which to cure any defects of petition submitters; and

(D) Establish a process by which to challenge the validity or purported purpose of a petition that:

(i) Must be adjudicated as a contested case under the Uniform Administrative Procedures Act, codified in title 4, chapter 5, part 3; and

(ii) Upon issuance of a final decision regarding the petition in accordance with subdivision (c)(1)(D)(i), permits an aggrieved party, including one (1) or more petition signatories, to appeal the decision to chancery court;

(2) Post a valid petition, excluding the signature pages, on its website, including the purpose of and number of signatories on the petition, and each library to which the petition applies; and

(3) Prominently publish on its website that any legally sufficient petition signatory or group of petition signatories have standing to be a party to a challenge to the validity or purported purpose of a petition and any subsequent appeal or judicial action regarding the same in accordance with subsection (d).

(d) In an administrative or judicial hearing on the validity or purported purpose of a petition, a petition signatory or group of petition signatories have standing as a party to such action or hearing.

(e) A petition in force may be amended or modified in the same manner as the petition in force.

10-1-404.

(a) Upon receipt of a notice and petition without the signature pages, a library shall immediately:

(1) Remove from places and locations readily accessible to or viewable by minors all content and material specified in the petition;

(2) Ensure that no content or material specified in a petition can be distributed to minors;

(3) Publish on its website that content and material specified in the petition are no longer available to minors;

(4) Notify the governing library board and appropriate local governmental legislative body; and

(5) Report completion of such actions to the secretary of state.

(b) A library shall not permit the restoration, replacement, or repositioning of content and material specified in a petition to its original location or in a manner that permits its display, distribution, or ready accessibility to a minor unless the petition is found to be invalid, in whole or in part, in accordance with the petition review and appeal process established by the secretary of state pursuant to § 10-1-403(c)(1)(D). If a petition is found to be invalid in part, a library may only take action with respect to that content or material that is deemed to be outside the scope of the otherwise valid petition.

10-1-405.

Notwithstanding another law to the contrary, the division of public libraries and archives created under § 10-1-101, a regional library board operating under chapter 5 of this title, or another library board or governing entity of a library shall not countermand, invalidate, modify, or otherwise seek to bar the application of a petition or the contents of a petition, as applicable, in accordance with this part, or to reverse or modify decisions by a library concerning content or material repositioned or restricted for purposes of

denying viewing by or access to minors as the result of a valid petition applicable to such library unless the petition is found to be invalid, in whole or in part, in accordance with the petition review and appeal process established by the secretary of state pursuant to § 10-1-403(c)(1)(D). If a petition is found to be invalid in part, the division, library board, or governing entity may only take action with respect to that content or material that is deemed to be outside the scope of the otherwise valid petition.

SECTION 2. If a provision of this act or its application to a person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 3. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2024.